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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

DAREN LEWIS WRIGHT,

Defendant and Appellant.

H042653

(Santa Clara County

Super. Ct. Nos. CC943481,

C1088514)

Defendant Daren Lewis Wright challenges the trial court's denial of his request to have three 2010 felony convictions for commercial burglary (counts 9, 11, and 12 in case No. CC943481) resentenced as misdemeanor shoplifting convictions. The only indication in the record of the nature of these three convictions is the information, which states that they arose from January 2009 and March 2009 entries into a Carl's Jr., a gas station, and a Taco Bell. Defendant did not file a written petition, submit any evidence, or make an offer of proof in support of his request as to these three convictions in the superior court. Nevertheless, he argues on appeal that these three convictions qualified for treatment as shoplifting convictions under Proposition 47 because "each of those entries could well have been within normal business hours" and "there was no reason to believe the property was worth more than \$950.00."

At the hearing below, the prosecutor told the court that she had “researched each of the [commercial burglary counts]” in “docket ending in 481” “and they were all during nonbusiness hours.”¹ Defendant’s trial counsel did not challenge this representation. The court accepted the prosecutor’s representation and found that “[i]n the docket ending 481 . . . , there are no eligible counts.” Defendant’s trial counsel, when asked if she had “[a]nything further . . . on that issue,” said “[n]o, Your Honor.”

First, “on appeal a judgment is presumed correct, and a party attacking the judgment, or any part of it, must affirmatively demonstrate prejudicial error.” (*People v. Garza* (2005) 35 Cal.4th 866, 881.) Second, the appellant bears the burden of presenting an adequate record on appeal. (*People v. Carter* (2010) 182 Cal.App.4th 522, 531, fn. 6.) Third, a petitioning defendant has the burden of demonstrating in the trial court his eligibility for relief under Proposition 47. (*People v. Rivas-Colon* (2015) 241 Cal.App.4th 444, 449; *People v. Romanowski* (2017) 2 Cal.5th 903, 916.)

Here, defendant failed to satisfy any of these burdens. The appellate record contains no indication that defendant filed a written petition, submitted any evidence, or even argued that these three burglary convictions qualified for treatment as shoplifting convictions under Proposition 47. A commercial burglary conviction is eligible for Proposition 47 relief only if the burglary occurred while the business was “open during regular business hours.” (Pen. Code, § 459.5.) In the trial court, the prosecutor asserted that the businesses were closed when defendant’s burglaries occurred. Defendant made no contrary assertion. Since the record defendant has provided does not establish that he met his burden below, he has failed to affirmatively demonstrate error.

The trial court’s order is affirmed.

¹ The Attorney General erroneously attributes these comments to defendant’s trial counsel.

Mihara, J.

WE CONCUR:

Elia, Acting P. J.

Bamattre-Manoukian, J.

People v. Wright
H042653